

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DIANNE NELSON,

Plaintiff, No. CIV S-04-1103 DFL KJM PS

vs.

PLACER COUNTY, et al.,

Defendants. FINDINGS AND RECOMMENDATIONS

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The motion for summary judgment, or in the alternative summary adjudication, by defendants Armstrong, Bloomfield, McInerney and Meeh, and joinder therein by defendant LaBouff, came on regularly for hearing on February 22, 2006. Plaintiff appeared telephonically in propria persona. Jamie Edwards appeared telephonically for defendants Armstrong, Bloomfield, McInerney and Meeh. Richard Crabtree appeared telephonically for defendant LaBouff. Upon review of the motion, the documents in support and opposition, upon hearing the arguments of plaintiff and counsel, and good cause appearing, THE COURT FINDS AS FOLLOWS:

In this action, plaintiff alleges claims under 42 U.S.C. §§1983, 1985 and 1986 arising out of Placer County Code Enforcement conduct occurring at plaintiff's home in Placer

1 County.¹ As explained further below, plaintiff contends that the moving defendants' acts and/or
2 omissions led to further damage and injuries to plaintiff, caused by constitutional rights
3 violations by Placer County Code Enforcement personnel. Plaintiff requests the court take
4 judicial notice of several exhibits. Defendants have objected based on lack of authentication.
5 The objection is well taken. In light of plaintiff's pro se status, the court has reviewed plaintiff's
6 exhibits before issuing these findings and recommendations. It appears that even if
7 authenticated, these exhibits do not advance plaintiff's case.²

8 **I. Allegations in Complaint**

9 Plaintiff alleges specifically that defendant Armstrong was notified by plaintiff
10 that someone reportedly had impersonated defendant Meeh with respect to a Code Enforcement
11 complaint. Second Am. Compl. ¶¶ 59, 133. Defendant Armstrong's failure to investigate the
12 alleged impersonation caused plaintiff further damage and injuries resulting from constitutional
13 rights violations by Code Enforcement personnel. Id. ¶ 133.

14 Defendant Bloomfield's failure to reply to plaintiff's letter, in which plaintiff
15 detailed alleged constitutional rights violations by Code Enforcement personnel, resulted in still
16 further damage, injuries and constitutional rights violations by Code Enforcement personnel. Id.
17 ¶¶ 76, 132.

18 Defendant LaBouff also received written correspondence from plaintiff, in which
19 she detailed constitutional violations by Code Enforcement personnel. Id. ¶ 132. Defendant
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21 ¹ As to plaintiff's claims arising under 42 U.S.C. §§ 1985 and 1986, plaintiff fails to allege
22 plaintiff is within a protected class; therefore plaintiff does not state a cognizable cause of action for
conspiracy.

23 ² The court also acknowledges receipt of plaintiff's last minute filing after business hours
24 on February 21, 2006. Counsel for defendant LaBouff did not receive the last minute filing prior to
25 oral argument on February 22, 2006. Plaintiff cites Federal Rule of Civil Procedure 56 as allowing
the last minute filing. However nothing in Rule 56 expressly allows such a filing, and the local rules
26 expressly provide for much earlier filing of opposition. See Local Rule 78-230(c). As with the
plaintiff's exhibits covered by her judicial notice request, the court has reviewed plaintiff's late filing
but determined that it does not alter the determination reached below.

1 LaBouff's failure to investigate her allegations also resulted in further damage, injuries and
2 constitutional rights violations by Code Enforcement personnel. Id. ¶¶ 76, 132.

3 Plaintiff alleges defendant McInerney was aware that the Code Enforcement file
4 remained open after a settlement agreement was reached. Id. ¶ 46. Defendant McInerney's
5 failure to act resulted in continued injury and damage to the plaintiff. Id. ¶¶ 46, 76, 99.

6 Finally, plaintiff alleges defendant Meeh's failure to report the forging of his
7 name on the Code Enforcement complaint caused plaintiff damage, injury and constitutional
8 rights violations by Code Enforcement personnel. Id. ¶¶ 59-61, 99, 134.

9 **II. Analysis**

10 The Civil Rights Act under which this action was filed provides as follows:

11 Every person who, under color of [state law] . . . subjects, or causes to be
12 subjected, any citizen of the United States . . . to the deprivation of any rights,
13 privileges, or immunities secured by the Constitution . . . shall be liable to the
party injured in an action at law, suit in equity, or other proper proceeding for
redress.

14 42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the
15 actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See
16 Monell v. Department of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362
17 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the
18 meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or
19 omits to perform an act which he is legally required to do that causes the deprivation of which
20 complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

21 Moreover, supervisory personnel generally are not liable under section 1983 for
22 the actions of their employees under a theory of respondeat superior and, therefore, when a
23 named defendant holds a supervisory position, the causal link between him or her and the
24 claimed constitutional violation must be specifically alleged. See Ivey v. Board of Regents, 673
25 F.2d 266, 268 (9th Cir. 1982).

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1 Defendants Armstrong, Bloomfield, LaBouff, McInerney and Meeh at no time had
2 supervisory authority over Code Enforcement personnel. Declaration of Richard Armstrong ¶ 4;
3 Declaration of Rex Bloomfield ¶ 4; Declaration of Anthony LaBouff ¶ 5; Declaration of Joseph
4 McInerney ¶ 5; Declaration of Dennis Meeh ¶ 6. Plaintiff merely alleges defendants either
5 received letters or were aware that the Code Enforcement file remained open after the settlement.
6 Plaintiff presents no cognizable evidence supporting a claim of supervisory liability because no
7 constitutional violation can be linked to the conduct of the moving defendants. Moreover, based
8 on a review of plaintiff's voluminous pleadings, it does not appear that plaintiff can amend the
9 complaint to show liability under § 1983. The lack of supervisory authority is dispositive;
10 summary judgment therefore should be granted.³

11 Accordingly, IT IS HEREBY RECOMMENDED that summary judgment be
12 granted in favor of defendants Armstrong, Bloomfield, LaBouff, McInerney and Meeh.

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14 ³ Defendants' remaining contentions also have merit. On July 11, 2000 plaintiff entered
15 into the settlement agreement with defendant Placer County, in which plaintiff released all claims
16 arising out of matters that could have been the subject of a government tort claim against defendant
17 Placer County. Plaintiff's tort claim alleged events occurring between June 1999 and February 2000,
18 involving Code Enforcement personnel. The portions of the complaint alleging constitutional
19 violations based on the same alleged violations compromised by the settlement agreement are thus
20 barred. Release of All Claims, Declaration of Linda Puppione, Exhibit C; cf. Second Am. Compl.
¶¶ 40-41.

21 Plaintiff filed the original complaint on August 26, 2003. Thus, the claims based on
22 conduct occurring before August 26, 2002, are barred by the statute of limitations. Cal. Code Civ.
23 Proc. § 340 (amended 2002 to extend limitations period from one year to two years for conduct
24 occurring after January 1, 2003); see also Wilson v. Garcia, 471 U.S. 261, 268-71, 276 (1985); see
25 Second Am. Compl. ¶ 14.

26 As a threshold matter, defendants Armstrong and Meeh, Placer County Sheriff peace
officers, had no duty to investigate plaintiff's allegation of an "impersonation" on a Code
Enforcement complaint form. See Martinez v. California, 444 U.S. 277, 284-85 (1980); Ketchum
v. County of Alameda, 811 F.2d 1243, 1247 (9th Cir. 1987); cf. Second Am. Compl. ¶¶ 59-61.

Finally, defendants are entitled to qualified immunity. Government officials
27 performing discretionary functions generally are shielded from liability for civil damages insofar as
28 their conduct does not violate clearly established statutory or constitutional rights of which a
29 reasonable person would have known. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). In this case,
30 the alleged conduct of the moving defendants cannot be linked to a constitutional violation, thus
31 summary judgment based on qualified immunity is appropriate. Saucier v. Katz, 533 U.S. 194,
32 201-02 (2001); see also Brosseau v. Haugen, 543 U.S. 194, 198 (2004); Harlow, 457 U.S. at 818.

1 These findings and recommendations are submitted to the United States District
2 Judge assigned to the case, as provided by Title 28 U.S.C. § 636(b)(1). Within ten days after
3 being served with these findings and recommendations, any party may file written objections
4 with the court and serve a copy on all parties. Such a document should be captioned "Objections
5 to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be
6 served and filed within ten days after service of the objections. The parties are advised that
7 failure to file objections within the specified time may waive the right to appeal the District
8 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 DATED: April 4, 2006.

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12 UNITED STATES MAGISTRATE JUDGE
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